Supreme Court, U.S.
FILED

97-35 JUN 16 1997

No. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

RONALD GREGG,

Petitioner.

v.

THE STATE OF OREGON,

Respondent.

On Petition For Writ of Certiorari to the
Oregon Supreme Court

PETITION FOR WRIT OF CERTIORARI

Gareld Joel Gedrose, OSB 80236
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Attorney for Petitioner

18 pp

QUESTION PRESENTED

Does an uncharged individual have a Fifth Amendment right, under the United States Constitution, to refuse to participate in a psycho-sexual evaluation?

PARTIES TO THE PROCEEDINGS

The parties to the proceeding in the Oregon Supreme Court, the Oregon Court of Appeals and the trial court are those in the caption.

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The decision of the Circuit Court of the State of Oregon for Marion County is set forth at App. A.

The Order of the Oregon Court of Appeals, found at 142 Or App. 312, is set forth at App. B.

The Order of the Oregon Supreme Court denying Review, found at 325 Or 80, is set forth at App. C.

BASIS FOR JURISDICTION

The Oregon Supreme Court's Order denying review was signed on March 18, 1997. This court has jurisdiction to review the Oregon Supreme Court's decision pursuant to 28 USC §1257(a).

STATEMENT OF THE CASE

Beginning in 1989, Petitioner's minor children came under the jurisdiction of Marion county Children's Services Division (CSD) amidst allegations of sexual abuse perpetrated upon them by their father, Petitioner herein. Approximately June 23, 1992, the Marion County Circuit Court, Juvenile Division, ordered Petitioner to enter and complete a sexual offender treatment program approved by CSD, and to authorize the therapist to release information from such treatment to CSD and the Court, or to release the files of Petitioner's current therapist. CSD, with the assistance of the Court, was to prepare the appropriate releases which would allow the therapist to divulge information to the Court and CSD. These releases were never prepared.

Petitioner objected to this requirement based on his Constitutional right not to incriminate himself under the fifth Amendment to the United States Constitution.

Following a lengthy dialogue between Petitioner's counsel and the Marion County District Attorney's Office, concerning Petitioner's Constitutional right not to incriminate himself, and attempts to obtain immunity, Petitioner was finally ordered by the Court to attend an evaluation by Dr. William Davis, a

local psychologist selected by CSD.

After again invoking his right not to incriminate himself, Petitioner appeared at the offices of Dr. Davis and advised the doctor that he would not answer any questions which might tend to incriminate him. Dr. Davis declined to conduct the evaluation.

Petitioner was next charged with criminal contempt for failing to obey the Court's Order regarding evaluation and treatment in a psycho-sexual program.

On May 23, 1994, a trial was held and Petitioner was found to be guilty i.e. in criminal contempt.

On May 15, 1995 Petitioner was sentenced to 120 days incarceration, execution of sentence was stayed pending appeal.

On July 24, 1996, the Oregon Court of Appeals affirmed Petitioner's conviction without opinion, State v. Gregg, 142 Or App 312.

On March 18, 1997, the Oregon Supreme Court declined review with Justices Van Hoomison and Durham voting to allow review. State v. Gregg, 325 Or 80.

Petitioner has never been charged with any offense arising out of the children's allegations.

REASON FOR GRANTING THE WRIT

This case presents an important question of law regarding the right of an individual to remain silent and refuse to provide information which may well lead to criminal prosecution, and to do so without the fear of criminal sanctions.

No rule of law is more firmly established in this country than that which states ". . . nor shall any person . . Be compelled in any criminal case to be a witness against himself. . .". United States Constitution, Fifth Amendment.

The right of an individual not to be compelled to provide testimony against himself has, since the establishment of the Republic, been one of the defining concepts of our legal system, guaranteed by the Fifth Amendment to the United states Constitution as well as the Constitutions of every state of the Union.

The right to remain silent may be properly invoked whenever there exists a reasonable possibility that a person's words may provide the link in the chain of evidence needed to prosecute the declarant, and the courts are bound to honor the invocation of the right not to provide incriminating testimony. Hoffman v. United States, 341 US 479, 486 (1951). The privilege is validly invoked whenever there are "substantial hazards of self incrimination" that are real and appreciable," not merely

"imaginary and unsubstantial". United States v. Neff, 615 F2d 1235, 1239 (9th Cir), *cert denied*, 447 US 925 (1980).

The right not to incriminate oneself by testimonial mandates that an individual must be advised prior to a court ordered, pretrial mental evaluation, that he has the right to remain silent, and if he chooses to waive that right, any statement made may be used against him in a subsequent prosecution. Estelle v. Smith, 451 US 454, 101 S. Ct. 1866, 681 L.Ed2d 359 (1981). Surely, one who is not charged with a crime must enjoy this same basic privilege.

In like fashion, this Court has held that a convicted criminal defendant's right against self incrimination precluded the state of Texas from conducting a psychiatric examination concerning future dangerousness without first informing the defendant that he had the right not to speak to the psychiatrist, and if he elected to participate in the examination, the information could be used against him. Powell v. Texas, 492 US 680, 109 S.Ct. 3146, 106 L.Ed2d. 551 (1989). Once again, should an uncharged individual be afforded less?

CONCLUSION

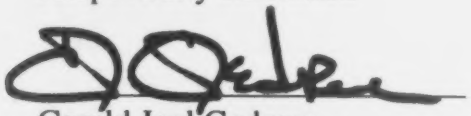
This case presents this Court with the opportunity to address whether Petitioner should be deemed to have prop-

erly invoked his right against self incrimination. Because Petitioner was doing nothing more than asserting his right to remain silent and be free from self incrimination at a time he was facing "real and appreciable", "substantial hazards of self incrimination" United states v. Neff, 615 F2d 1235, 1239 (9th Cir), *cert denied*, 447 US 925 (1980), the court should grant Petitioner's petition to determine whether a person in Petitioner's position can validly be convicted of contempt for refusing to testify.

For each of the above reasons, Petitioner respectfully urges this court to grant Petitioner's Petition for Certiorari.

Dated this 15th day of June, 1997.

Respectfully submitted



Gareld Joel Gedrose
Attorney for Petitioner

APPENDICES

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION
Juvenile Department
Case Nos 89J1131, 89J1132, 91J0909

THE STATE OF OREGON	}	
	}	
Plaintiff,	}	ORDER OF
vs.	}	CONTEMPT
	}	
RONALD GREGG,	}	

This matter having come before the Court on May 23, 1994 for hearing, the Court having taken evidence herein and allowed additional time for the filing of supplemental arguments by counsel in writing and such supplemental argument having been received, and the Court being fully advised in the premises, the Court makes the following finds (sic) of fact.

1. Ronald Gregg admitted to a petition filed in juvenile division of the Circuit Court of Marion County alleging. inappropriate sexual contact with his children.

2. On July 23, 1992, subsequent to his admission, Ronald Gregg was ordered by Circuit Court Judge Pro Tem Connie Haas to participate in sex offender evaluation, and that order was never appealed or challenged.

3.. Ronald Gregg was reminded on numerous occasions of his obligations under the court order.

4. Ronald Gregg has consistently, willfully and knowingly refused to comply with the court order.

WHEREFORE, the Court finds that Ronald Gregg is in con-

tempt of this Court.

DATED this 24th day of October 1994

/s/ Griffith C. Steinke

Griffith C. Steinke

Circuit Judge Pro Tem

FILED: July 24, 1996

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of Julia, Christian Gregg, a Minor Child.	}
STATE OF OREGON, Respondent,	} Marion County Circuit Court } No. 89J1131
v.	} CA A88881
RONALD GREGG, Appellant.	}
In the Matter of Nicole Phillips Gregg, a Minor Child.	}
STATE OF OREGON, Respondent,	} Marion County Circuit Court } No. 89J1132
v.	}
RONALD GREGG, Appellant.	}
In the Matter of Johnathan Gregg, a Minor Child.	}
STATE OF OREGON, Respondent,	} Marion County Circuit Court } No. 91J0909
v.	}
RONALD GREGG, Respondent.	}

Date argued or submitted on briefs: June 28, 1996

Before: Deits, Presiding Judge, and De Muniz and Haselton, Judges

Attorney for Appellant: Gareld Joel Gedrose

Attorney for Respondent: Virginia L. Linder/Kay E. Sunderland

AFFIRMED WITHOUT OPINION

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing Party: Respondent

[ ] No Costs Allowed
[ ] Costs allowed, payable by:

In a case in which a party could be represented by appointed counsel entitled to compensation under ORS 138.500, but the prevailing party is represented by retained or appeared pro se, the prevailing party is allowed costs

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IN THE SUPREME COURT OF THE STATE OF OREGON

In the Matter of Judith Gregg, a Minor Child.	}Marion County Circuit }Court No. 89J1131
STATE OF OREGON, Petitioner-Respondent, Respondent on Review, v. RONALD GREGG, Defendant-Appellant, Petitioner on Review.	} } } }CA A88881 }SC S43916 } }ORDER DENYING REVIEW
In the Matter of Nicole Phillips Gregg, a Minor Child.	}Marion County Circuit }Court No. 89J1132
STATE OF OREGON, Petitioner-Respondent, Respondent on Review, v. RONALD GREGG, Defendant-Appellant, Petitioner on Review.	} } } } } } }
In the Matter of Johnathan Gregg, a Minor Child.	}Marion County Circuit }Court No. 91J0909
STATE OF OREGON, Petitioner-Respondent, Respondent on Review, v. RONALD GREGG, Defendant-Appellant, Petitioner on Review.	} } } } } } }

The Court has considered the petition for review and ORDERS that it be denied.

Dated this 18th day of March 1997.

/s/ Wallace P. Carson Jr.
Wallace P. Carson, Jr.
Chief Justice

Van Hoomissen and Durham, JJ., would allow